

first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the

expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, D.C. 20555, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1 (800) 248-5100 (in Missouri 1 (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Leif J. Norrholm: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Gerald Charnoff, Esq., Thomas A. Baxter, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N. Street, N.W., Washington, D.C. 20037, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer, or the Atomic Safety and Licensing Board that the petition and/or request, should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated September 8, 1994, which is available for public inspection at the Commission's Public Document

Room, the Gelman Building, 2120 L Street, N.W. Washington, D.C. 20555, and at the local public document room located at Callaway County Public Library, 710 Court Street, Fulton, Missouri 65251.

Dated at Rockville, Maryland, this 24th day of February 1995.

For the Nuclear Regulatory Commission.

**L. Raynard Wharton,**

*Project Manager, Project Directorate III-3, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-35411; File No. SR-Amex-95-08]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by American Stock Exchange, Inc. Relating to Membership Structure and Requirements

February 22, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on February 17, 1995, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization.<sup>1</sup> The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing certain revisions to its Constitution, Rules and Membership Lease Plan regarding membership structure and requirements. The text of the proposed rule change is available at the Office of the Secretary, the Amex, and at the Commission.

<sup>1</sup> This filing withdraws and replaces File No. SR-Amex-94-23, which was noticed for comment in Securities Exchange Act Release No. 34968 (November 10, 1994), 59 FR 59804 (November 18, 1994). The prior Amex proposal and the comments received in response thereto are available at the Commission.

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Section A, B, and C below, of the most significant aspects of such statements.

### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

#### 1. Purpose

##### Background

The Exchange Member Ownership Issues Committee was established in June of 1992 to examine the need for changes and revisions in the Exchange's membership structure and requirements. Following an extensive review, the Committee recommended certain changes in order to update the membership structure and respond to the expressed needs of the membership. These changes, which have been approved by the Exchange's Board of Governors and membership, are described below.

##### Seat Ownership

Currently, each of the 661 regular memberships and 203 options principal memberships are held in the name of an individual member.<sup>2</sup> Member firms and member corporations may beneficially own these memberships by designating an individual (typically a general partner or employee of a member firm or an officer or employee of a member corporation) nominally to own the seat in their behalf. This is accomplished by either using a lease<sup>3</sup> or an a-b-c agreement.<sup>4</sup> In the case of a lease, a

member organization must also place the lease in the name of an individual nominee as lessor.

Individuals are not permitted to own more than one seat. Member organizations, on the other hand, may own multiple seats beneficially, but each seat must be nominally owned by an individual member.

The Exchange proposes to eliminate the requirement that seats be individually owned. The Amex believes that this requirement is outdated and not responsive to the needs of the member community. Several other exchanges permit organizations, as well as individuals, to own memberships (e.g., the Chicago Board Options Exchange ("CBOE"), the New York Futures Exchange and the Pacific Stock Exchange ("PSE")).

Under the proposal, an organization would be able to be both legal and beneficial owner of one or more memberships. The organization would be able to lease a seat to a lessee or to designate an individual as nominee to "operate" the seat. As a general matter, nominees (like lessees) would be deemed to be members of the Exchange and would be subject to all of the obligations and enjoy all the privileges of membership under the Exchange Constitution and Rules, except (1) for purposes of participating in any distribution of Exchange assets or funds upon liquidation, dissolution or winding up of the affairs of the Exchange and (2) ultimate control of the membership would rest with the organization owner.<sup>5</sup> The a-b-c agreement would no longer be required. It would be replaced with another document to authorize the nominee to act on the member organization's behalf in all Exchange matters and to provide that the member organization is responsible for all the nominee's Exchange-related obligations.

The proposal also would permit both individuals and organizations to own multiple memberships. Individuals would be able to lease their additional seats, or to designate nominees to "operate" the seats and act as their employees.

A number of members have indicated that they would be interested in

membership. Upon termination of the a-b-c agreement, the individual must either (1) retain the membership and pay the member organization the amount necessary to purchase another membership; (2) sell the membership with the proceeds paid over to the member organization; or (3) transfer the membership to a person designated by the member organization.

<sup>5</sup> As discussed below, *see infra* note 9 and accompanying text, the owner would retain the right to vote seats held by nominees and certain lessees.

acquiring more than one membership. The Exchange finds no compelling reason to continue to prohibit multiple memberships. In this regard, it should be noted that the CBOE, the PSE, the Philadelphia Stock Exchange ("Phlx") and virtually all commodities exchanges permit multiple ownership.

##### Leasing

Currently, both the lessor and the lessee of a leased seat must be individuals. Because, under the proposal, organizations would be permitted to own seats directly, as well as beneficially, the member organization may be the lessor. Such member organization would not be required to designate a nominee as the lessor on the seat.

##### Claims Procedure

Under the current rules, no member may sell or transfer his membership unless he does so pursuant to established Exchange procedures. All transfers must be posted on the Exchange Bulletin Board and published in the *Weekly Bulletin* for at least seven days. During this time, other members and member organizations must file their claims against the seat with the Exchange. The same procedures are used for intrafirm transfers. Before the seat can be transferred to another employee in the firm, the firm is required to satisfy any outstanding claims.

Basically, the same transfer and claims procedures would be utilized under the new membership structure. In addition, the designation of a nominee by a seat owner would be deemed to be a transfer, and the posting and claims procedures would apply.

##### Subordination of Membership to Trading Losses and Debts

Currently, all memberships are subordinated to (*i.e.*, "stand behind") the trades of the member in whose name the seat is held. In the case of a leased seat, the lessor's seat is at risk for his lessee's trading losses and other debts incurred in connection with membership. In the case of seats held pursuant to a-b-c agreements, member organizations are responsible for obligations that their a-b-c seatholders incur.<sup>6</sup>

The above requirements would remain the same under the proposal. If an individual or organization owns multiple memberships that are held subject to one or more leases, only the

<sup>2</sup> Both regular members and options principal members are exchange members as defined in Section 3(a)(3) of the Act. A regular member may execute transactions in both equities and derivatives. In contrast, an options principal member is limited to trading as principal in options and other derivative products. For further discussion of types of memberships, see Art. IV. Sec. 1 of the Amex Constitution.

<sup>3</sup> As noted below, the lease must be executed by the nominal seat owner, rather than the member organization with which such individual is associated and which is the beneficial owner of the membership.

<sup>4</sup> An a-b-c agreement is an arrangement between the individual who nominally owns a seat and the member organization with which such individual is associated and which is the beneficial owner of the

<sup>6</sup> A member organization is responsible even if its a-b-c seatholder's obligations exceed the value of the seat.

seat used by a given lessee's would stand behind that lessee trades. If, however, an individual or organization owns multiple memberships as to which nominees have been designated, all of the owner's seats would stand behind the trades of any nominee.

### Fees

Currently, when a seat is sold, the initiation fee is \$2,500 for both a regular and options principal membership. The initiation fee on a nominal transfer (*i.e.*, within a firm pursuant to an a-b-c agreement)<sup>7</sup> is \$2,500 for a regular membership and \$500 for an options principal membership. When a membership is transferred to a lessee, the initiation fee is \$1,500 for a regular membership and \$500 for an options principal membership. Dues for all members are \$750 per year. Floor facilities fees are \$1,400 per year for active members.

The Exchange is proposing to change the fee structure in order to equalize fees between regular and options principal memberships.<sup>8</sup> The initiation fee of \$2,500 when a seat is sold would be retained for both regular and options principal memberships. However, all nominal transfers (*i.e.*, intra-firm) and leases would be subject to a \$1,500 initiation fee. Changes in nominees would be deemed to be nominal transfers. According to the Exchange, it does not appear to be necessary or appropriate to retain the disparity in initiation fees for nominal and lease transfers of regular and options principal memberships in view of the fact that the administrative expenses (*i.e.*, staff time and paperwork) attributable to the two types of membership are identical.

The Exchange, however, does not believe that it would be appropriate for the initiation fee requirement to deter members from taking advantage of the new alternatives that would be available in structuring ownership of Amex seats. Accordingly, for the ninety-day period, after these changes become effective, no initiation fee would be charged for changes in membership ownership, except for bona fide sales and bona fide changes in leases or nominees. A \$250 processing fee would be imposed on transfers where no initiation fee is charged.

### Voting

Currently, members subject to an a-b-c agreement sign an irrevocable proxy giving their votes to their member

organizations. The organization then designates an individual (typically an employee) who is authorized to vote on behalf of the membership. In the case of leased seats, the vote is negotiable between the lessor and lessee.

Under the new rules, organizations would be entitled to vote all of the memberships that they own (and do not lease out) and would have to designate an individual who is authorized to vote on their behalf. Individuals who own more than one seat would be able to vote on behalf of the seat that they are actively using, as well as the seats of their nominees. With respect to leased seats, the vote would still be negotiable between lessor and lessee. There would be a specific box on the lease itself on which the parties would indicate who is authorized to vote.<sup>9</sup>

### Gratuity Fund

Currently, the Exchange Gratuity Fund ("Fund") provides that only families of regular members<sup>10</sup> receive the Gratuity Fund death benefit of \$100,000. To fund the death benefit, each regular member contributes \$152 to the Fund upon becoming a member and is assessed \$152 each time a fellow regular member dies (subject to reduction in the first assessment of the year to reflect income earned by the Fund in the previous year). In the case of leased seats, the lessor is considered the member for purposes of the Gratuity Fund.

A number of changes to the Gratuity Fund are proposed. These changes are intended to achieve two goals: To provide increased benefits and to close "loopholes" which could enable persons to become Participants in the Gratuity Fund under circumstances which would be inappropriate.

Under the proposal, the benefit would be increased to \$125,000. The amount of each assessment would fluctuate since, as discussed below, the number of Participants in the Fund would vary based on who is eligible at the time of a member's death and since the extent to which Participants were "phased-in" would vary.<sup>11</sup> As is currently the case, Participants would have to pay both an initial assessment upon becoming a Participant and an assessment each time an eligible individual dies. The first group of persons to become newly eligible for the Gratuity Fund upon the adoption of these changes would be required to pay an initial assessment of

\$300.<sup>12</sup> Thereafter, persons who become eligible would be required to pay an initial assessment based on the number of Participants in the Fund at that time.

Under the proposal, options principal members and both options principal and regular member lessees (and nominees) would be included in the Gratuity Fund,<sup>13</sup> in addition to regular members and some lessors.<sup>14</sup> In order for a lessor's beneficiaries to be eligible to receive a Gratuity Fund benefit, the lessor must have been "active" on the Floor for at least two continuous years during this career (but after June 10, 1993).<sup>15</sup> "Active" is defined as meeting all Exchange requirements to be active on the Floor,<sup>16</sup> including passing any necessary examinations and being registered as, or associated with, a broker-dealer. "Two continuous years" is defined as two calendar years, meaning a period from one date through the preceding date two years hence (*e.g.*, from May 1, 1995 through April 30, 1997). Lessees and nominees would have to be currently active for their beneficiaries to receive a benefit. Individuals who own seats either would have to be currently active on the Floor or would have to have been active for at least two continuous years during their career (but after June 10, 1993) in order for their beneficiaries to receive a Gratuity Fund benefit.

It should be noted that a person would not have to maintain the same status for the two-year period. For example, a person who is a lessee for one and a half years and who then buys the seat (or another seat) and remains on it for at least six months would satisfy the active requirement. In addition, a person may be off the seat for up to sixty consecutive days during the two-year period without being considered to have

<sup>12</sup> The Gratuity Fund currently maintains a reserve of \$200,000, the amount necessary to pay two death benefits. If the benefit is increased, the reserve would be increased accordingly. The initial assessment of \$300 on new Participants would allow the Fund to achieve this goal, and would place new Participants on a par with existing Participants who, of course, paid an initial assessment when they first became eligible to participate in the Fund.

<sup>13</sup> Options principal members, lessees and nominees would also be eligible to become trustees of the Gratuity Fund.

<sup>14</sup> Lessors (and owners of seats as to which nominees have been designated) could be included in the Gratuity Fund pursuant to the transition arrangements, *see infra* notes 24-28 and accompanying text, or based on their prior active status, *see infra* notes 15-17 and accompanying text.

<sup>15</sup> As noted below, *see infra* note 28 and accompanying text, June 10, 1993 would be the cut-off date for eligibility for the transition arrangements.

<sup>16</sup> *See* Para. 9176 of the Amex Guide ("Membership Requirements and Admissions Procedures").

<sup>7</sup> *See supra*, note 4 and accompanying text.

<sup>8</sup> This proposal would not affect any change to annual dues or other fees.

<sup>9</sup> If no specification is made, the lessee would vote the seat.

<sup>10</sup> *See supra*, note 2.

<sup>11</sup> For further discussion of the "phase-in" schedule for Gratuity Fund Participants, *see infra* note 18 and accompanying text.

interrupted that period. Individuals would lose their right to participate in the Gratuity Fund based on prior active status if there should be any five-year period in which the person is not a lessor, lessee, nominee or seat owner.<sup>17</sup> Lessors who lose their prior active status would have to be active for another two continuous years in order to requalify for the Gratuity Fund. Members and nominees would either have to be currently active or active for another two continuous years in order to be eligible for the Gratuity Fund again.

Further, under the proposal, the Exchange would implement, for new Gratuity Fund Participants, a four year "phase-in" schedule based upon the length of time the individual in question had been a Participant.<sup>18</sup> The "phase-in" would operate as follows:

Upon the death of a Participant, a payment would be made based upon the length of time such person had been a Participant, according to the following schedule:

- Less than one year—\$25,000 (20% "phase-in").
- One year or more but less than two years—\$50,000 (40% "phase-in").
- Two years or more but less than three years—\$75,000 (60% "phase-in").
- Three years or more but less than four years—\$100,000 (80% "phase-in").
- Four years or more—\$125,000 (100% "phase-in").

If a participant who was "phasing-in" ceases to be a Participant for a period of less than five years, and such individual thereafter again becomes a Participant, he would be able to aggregate his periods of participation for purposes of

the "phase-in." For example, if an individual is a Participant for one year and then ceases to be a Participant for four years, and if he were again to become a Participant, he would be credited with the amount of time he previously spent as a Participant for purposes of the "phase-in" schedule.

If an individual who was a Participant ceases to be a Participant for a period of five years or more, and such individual thereafter again becomes a Participant, he would not be able to aggregate his periods of participation for purposes of the "phase-in" described above (i.e., regardless of the length of time he had previously been a Participant, the "phase-in" schedule would be applied as if he had never been a Participant in the past).

Each membership would pay at least one assessment, regardless of whether the owner or a lessee or nominee qualifies for the Gratuity Fund.<sup>19</sup> In some instances, there would be one assessment per seat and on others two (i.e., when both lessor and lessee are qualified). Gratuity Fund assessments would be based in all cases on the amount of the benefit payable and would be the same for all memberships assessed, regardless of whether or to what extent a particular Participant being assessed has already "phased-in" to full eligibility.

No member's beneficiaries would be entitled to receive more than one Gratuity Fund benefit upon the member's death by virtue of the deceased member's status as both lessor and lessee, or for any other reason. The family of a member who owns multiple memberships would be able to collect only one benefit. The member would be eligible on only one seat, and must designate that seat to the Exchange. The lessees or nominees of the other seats, of course, would be eligible on those seats.

The individuals who are nominee-lessors on behalf of member organizations would no longer be qualified for the Gratuity Fund under the proposed system (although, as discussed below, there would be a grandfather clause). This is because the member organization itself would be the lessor. Under the proposal, however, the individual who would have been named

as lessor most likely would not qualify for the Gratuity Fund anyway, since member organizations typically named an upstairs executive as lessor and such person would not be "active" and may not have been "active" in the past, at least within the last five years.

The trustees of the Gratuity Fund would have the authority to resolve disputes with respect to a person's eligibility to participate in the Fund.<sup>20</sup>

### Pension Trusts

Currently, the Exchange does not permit ownership of seats by trusts.<sup>21</sup> The proposal would permit pension plans (generally comprised of trusts or custodial accounts, including Keoghs and Individual Retirement Accounts) of "active" members (as defined above) to acquire ownership of one or more seats for investment purposes, and either to lease the seat or to designate a nominee to operate it.<sup>22</sup> The intent is to make this available only to pension trusts where the trust sponsor is an active member, or where the sponsor is a member organization and at least fifty percent (50%) of the pension trust beneficiaries are active members and/or Floor employees of the member organization. The trust itself would be the owner of the membership, and the trustee would have to become an approved person.<sup>23</sup> Only the nominee or lessee would be eligible for the Gratuity Fund, provided he or she is not already eligible for the Gratuity Fund with respect to another seat (e.g., as the owner of that seat). As is the case for other member organizations, the trust would be entitled to vote all of the seats that it owns (and does not lease out) and may designate who may vote on its behalf. If the seat is leased, the vote would be negotiable between the trust and the lessee.

### Transition Arrangements

The proposal includes a grandfathering provision for the Gratuity Fund revisions.<sup>24</sup> All regular members and existing regular member lessors would be grandfathered with respect to the "active" requirement, that

<sup>17</sup> This provision would apply to a person who had satisfied the active requirement and thus was eligible for the Gratuity Fund based on prior status and who thereafter disposed of his membership. If, within five years of leaving the Exchange, such person becomes a lessor or other inactive seat owner, he would retain his right to participate in the Gratuity Fund. If, however, more than five years pass, such person would lose his prior active status and would have to requalify for the Gratuity Fund. A person who leaves the Exchange would not be eligible for the Gratuity Fund benefit during any period when he is not a lessor, lessee, nominee or seat owner.

<sup>18</sup> This schedule is similar to that used by the New York Stock Exchange ("NYSE") regarding payments from its Gratuity Fund. See Art. XV, Sec. 3 of the NYSE Constitution.

The Amex's proposed "phase-in" schedule would be applied only on a prospective basis and would not be applicable to persons who are already Gratuity Fund Participants or who become Gratuity Fund Participants by virtue of the proposed amendments (e.g., options, principal members and lessees) regardless of whether such persons have been Participants or members for four years or more. However, an existing options principal member or lessee who "opts out" of the Gratuity Fund and on some other basis later becomes eligible would at that time be subject to the "phase-in." See *infra* notes 26-27 and accompanying text.

<sup>19</sup> The only exception to this would be in the case of an individual who is both the independent owner of and the user of a particular options principal membership and who "opts-out" of the Gratuity Fund under the transition provisions discussed below. For such a person's "opt-out" to be able to have any practical effect, his options principal seat would have to be exempt entirely from the obligation to pay assessments to the Gratuity Fund for so long as he remains the owner and user of that seat.

<sup>20</sup> For further discussion of rules governing trustees of the Gratuity Fund, see Art. IX of the Amex Constitution.

<sup>21</sup> Both the Phlx and the Chicago Mercantile Exchange permit pension trusts to own seats.

<sup>22</sup> The Exchange has been advised that the prohibited transaction provisions of the Employee Retirement Income Security Act and the Internal Revenue Code would preclude a member from being the nominee or lessee of the seat owned by his own pension trust.

<sup>23</sup> See Art. I, Sec. 3(g) of the Amex Constitution.

<sup>24</sup> For further discussion of the cut-off date for eligibility for the transition arrangements, see *infra* note 28 and accompanying text.

is, they would be deemed to have met it, even if they never were active for a two-year period. The grandfathering provision would include those lessors who are nominee-lessors on seats beneficially owned by an organization. A person grandfathered could lose his right to participate in the Gratuity Fund based on prior active status if there should be any five-year period in which he is not a lessor, lessee, nominee or seat owner.<sup>25</sup> As discussed above, for all non-grandfathered individuals, the "active" requirement must be satisfied after June 10, 1993.

Individuals who currently own options principal memberships would have a one-time opportunity to "opt-in" or "opt-out" of the Gratuity Fund. A decision to "opt-out" would be irrevocable for the rest of the person's life (unless the person subsequently buys a regular membership).<sup>26</sup> Options principal members who "opt-in" would be grandfathered with respect to the "active" requirement. Current lessees (both regular and options principal membership) would also have the right to "opt-out" of the Gratuity Fund, but such decisions would be effective only for the duration of their current lease, and new leases would require lessee participation in the Gratuity Fund. Lease renewals by the same two parties would not be considered to be new leases. Any new options principal member seat owner (other than an individual owner who previously chose to "opt-out" irrevocably as discussed above)<sup>27</sup> would be covered by the new rules.

With respect to the "phase-in" requirement, all those who are Participants in the Gratuity Fund on the date these proposals become effective, and all those who become Participants by virtue of these amendments (e.g., lessees and options principal members), would be deemed to be fully "phased-in," regardless of how long such persons have been Participants or Exchange members. All who become Participants thereafter would be subject to the "phase-in" requirements. If a lessee or options principal member "opted out" of the Gratuity Fund, as described above, and on some other basis later becomes a Participant, he would at that time be subject to the "phase-in."

While the foregoing grandfather provisions are appropriate in most cases, there was a concern that some people might attempt to rush through

the "loopholes" referred to earlier by becoming lessors prior to the date these proposals finally become effective. Accordingly, notwithstanding the above provisions, an individual who was not a regular member or a regular member lessor as of the date of the Board meeting at which these proposals were approved by the Exchange Board of Governors (June 10, 1993), and subsequently became a regular member lessor after June 10, 1993, would not be grandfathered with respect to the two-year active requirement.<sup>28</sup> Similarly, an individual who was not a regular or options principal member or a regular or options principal lessor as of June 10, 1993, and subsequently became an options principal lessor after June 10, 1993, would not be allowed to "opt-in" to the Gratuity Fund. Such individuals would be covered by the new rules.

Most of the above described changes in membership structure would expand the choices available to persons and organizations in structuring their relationships. However, the proposed changes would eliminate the existing a-b-c agreement, and certain individuals and organizations may find that disruptive. Accordingly, a member organization would be permitted to continue to utilize its existing a-b-c agreements for so long as the respective individual members remain on their seats.

## 2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Sections 6(b)(3), 6(b)(4) and 6(b)(5) in particular in that it assures a fair representation of Exchange members in the administration of its affairs, provides for the equitable allocation of reasonable dues, fees and other charges among members, and is designed to prevent fraudulent and manipulative acts and practices.

### B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition.

### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR-Amex-95-08 and should be submitted by March 22, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

**Margaret H. McFarland,**  
Deputy Secretary.

[FR Doc. 95-4994 Filed 2-28-95; 8:45 am]

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<sup>25</sup> See *supra*, note 17 and accompanying text.

<sup>26</sup> If that person subsequently buys a different options principal membership, the decision to "opt-out" would apply to that seat as well.

<sup>27</sup> See *supra*, note 26.

<sup>28</sup> However, in the event that such an individual dies during the period after June 10, 1993 but before the effective date of the changes, his beneficiaries would receive a Gratuity Fund benefit under existing requirements.